

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

TOM MAGNAFICI,

Plaintiff,

v.

Case No. 3:21-cv-8

TOWN OF OSCEOLA,

Defendant.

DEFENDANT TOWN OF OSCEOLA NOTICE OF REMOVAL

To: Tom Magnafici
c/o Attorney Gregory M. Miller
Trepanier MacGillis Battina P.A.
8000 Flour Exchange Building
310 Fourth Avenue South
Minneapolis, MN 55415

PLEASE TAKE NOTICE that Defendant, Town of Osceola, by its attorneys, CRIVELLO CARLSON, S.C., pursuant to 28 U.S.C. §§ 1331, 1441(a), and 1446, hereby removes this action from the Circuit Court for Polk County, Wisconsin to the United States District Court for the Western District of Wisconsin. In support of this Notice of Removal, Defendant states as follows:

1. A civil action designated as Case No. 20-CV-298 has been commenced and is now pending in the Circuit Court for Polk County, Wisconsin, the Honorable Daniel J. Tolan presiding, between Town of Osceola resident Plaintiff Tom Magnafici and Defendant Town of Osceola.

2. The Summons and Complaint in Case No. 20-CV-298 were filed on December 15, 2020, and served on Defendant fewer than 30 days ago. True and correct copies of the Summons and Complaint are attached as Exhibit A.

3. The Complaint in Case No. 20-CV-298, on its face, includes a claim under 42 U.S.C. § 12132 for an alleged violation of Title II of the Americans with Disabilities Act and 28 C.F.R. Part 35.

4. The United States District Court for the Western District of Wisconsin has jurisdiction over this action for the following reasons:

- a. pursuant to 28 U.S.C. § 1441, the matter here in controversy presents federal questions, over which this federal district Court has original jurisdiction;
- b. the case will be properly venued in the United States District Court for the Western District of Wisconsin, as the alleged events which form the basis for Plaintiff's claims occurred within the Western District; and
- c. the time permitted by statute for filing this notice of removal has not expired.

5. Pursuant to 28 U.S.C. § 1367(a), this Court's original jurisdiction under § 1331 also provides this Court with supplemental jurisdiction over other claims by. Plaintiff also asserts a claim of conspiracy to violate Title II of the ADA, a tort claim of intentional infliction of emotional distress based on Defendant's officers' and agents' alleged treatment of Plaintiff relative to his alleged disability, and a claim for violation of Wisconsin's Open Records law due to the manner by which Defendant responded to Plaintiff's request for documents.

6. Concurrent with filing this Notice of Removal, Defendant will notify all parties and Polk County Judge Daniel J. Tolan that this case has been removed to the United States District Court for the Western District of Wisconsin as required by 28 U.S.C. § 1446(d).

7. By removing this action from the Circuit Court of Polk County, Defendant does not waive any defenses available to it.

8. By removing this action from the Circuit Court of Polk County, Defendant does not admit any of the allegations in Plaintiff's complaint.

Dated this 5th day of January, 2021.

By: /s/ Jerilyn Jacobs
Jerilyn Jacobs
State Bar No. 1058334
Attorney for Defendant

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